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APPLICATION NO.	FIL	ING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO
10/069,849 02/28/2002		Mustafa Akram	H 4420 PCT/US	5227	
423	7590	06/25/2004		EXAMINER	
HENKEL CORPORATION THE TRIAD, SUITE 200				ELHILO, EISA B	
2200 RENAIS			ART UNIT	PAPER NUMBER	
GULPH MILLS, PA 19406				1751	
			DATE MAR ED: 06/25/2004		

Please find below and/or attached an Office communication concerning this application or proceeding.

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A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  Extensions of time may be available under the previous of 3 CPR 1.13(q), in no event, however, may a reply be timely filled after SX (to) MONTHS from the mailing date of this communication.  If the provide of the provide specified before the second of 1 cPR 1.13(q), in no event, however, may a reply be timely filled after SX (to) MONTHS from the mailing date of this communication.  If the provide of the provide specified above, the maximum of a distingty priorist whighly and will depice 150 (to) MONTHS from the mailing date of this communication.  If the provide the or extended period for reply will, by statute, cause the application to become ARANCO/NED (35 U.S.C. § 133).  Any reply exceeded by the Office ident than three monition after the mailing date of this communication, won if timely filed, may reduce any  strend period term adjustment. See 37 CPR 1.72(b).  Status  1) Responsive to communication(s) filled on 21 April 2004.  2a) This action is FINAL. 2b) This action is non-final.  3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4) Claim(s) 18-23 and 26-40 is/are rejected.  7) Claim(s) is/are allowed.  (b) Claim(s) 18-23 and 26-40 is/are rejected.  7) Claim(s) is/are allowed.  (c) Claim(s) is/are allowed.  (d) Claim(s) is/are allowed.  (e) Claim(s) is/are allowed.  (f) Claim(s) is/are allowed.  (h) Claim(s		Application No.	Applicant(s)						
Elsa B Elhilo  1751  - The MAILING DATE of this communication appears on the cover sheet with the correspondence address - Period for Repty  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  If the period for reply appendix and passed with the communication of the period of the period to reply appendix passed with the statutory individence of the communication.  If the period for reply appendix passed with the process of the statutory period will apply willing the abdulatory minimum of thiny (30) days will be considered timely.  If the period for reply appendix passed will be statutory period will apply willing the abdulatory minimum of thiny (30) days will be considered timely.  If the period for reply appendix passed will be statutory period will apply willing the abdulatory minimum of thiny (30) days will be considered timely.  If the period for reply appendix passed will be provided to the statutory period will apply willing the statutory minimum of thiny (30) days will be considered timely.  If the period for reply appendix passed will be provided to the statutory period will apply willing the statutory will be considered timely.  If the period for reply apply willing the statutory willing and the statutory willing the days willing and the statutory willing willing the statutory willing and the statutory willing the statutory willing and the statutory reply willing the statutory willing and the statutory	055 4-45 0	10/069,849	AKRAM ET AL.						
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THE MAILING DATE OF THIS COMMUNICATION.  - Estencina of time may be available under the provision of 3 CFR 1.13(s). In no evord, however, may a reply bet limely field after SIX (5) MONTHS from the mailing date of this communication of 3 CFR 1.13(s). In no evord, however, may a reply bet limely field after SIX (5) MONTHS from the mailing date of this communication of 3 CFR 1.13(s). In the provision of the provis	The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply								
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5	4)⊠ Claim(s) <u>18-23 and 26-40</u> is/are pending in the application.								
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a) All b) Some * c) None of:  1. Certified copies of the priority documents have been received.  2. Certified copies of the priority documents have been received in Application No  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  * See the attached detailed Office action for a list of the certified copies not received.  * See the attached detailed Office action for a list of the certified copies not received.  * Interview Summary (PTO-413) Paper No(s)/Mail Date  Notice of Draftsperson's Patent Drawing Review (PTO-948) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)	Priority under 35 U.S.C. § 119								
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#### **DETAILED ACTION**

- This action is responsive to the amendment filed on 4/21/2004.
- The cancellation of claims 24-25 is acknowledged. Pending claims are 18-23 and 26-40.
- The rejection of claims 18, 20-22, 28, 30-36 and 38 under 35 U.S.C. 102(b) as being anticipated by Grollier et al. (US 4,425,132), is withdrawn because of the applicant's amendment in which the claims required at least one fiber-structure improving agent to be presented in the pretreatment composition.

#### NEW GROUND OF REJECTION

### Claim Rejections - 35 USC § 103

- The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
  - (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 18-23 and 26-40 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Grollier et al. (US 4,425,132) in view of Nicolas-Morgabtini et al. (US 5,954,871).

Grollier (US' 132) teaches a two-stage process for dyeing keratin fibers. The process comprises treating the fibers with a first composition having a pH of less than 8 and containing a from 0.05 to 6% of direct dyestuff of 4-amino-3-nitrophenol, wherein the amounts of the dye is within the claimed range or overlapped with the claimed range as claimed in claims 18, 20-23, 30-31 and 38 (see col. 8, line 5, col. 10, line 5 and col. 26, claim 12) and post-treated with an oxidation colorant composition comprising oxidative dye precursor of para-phenylenediamine

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and coupler of 2-methyl resorcinol as claimed in claim 18 and 32-35 (see col. 3, lines 60-61, col. 6, line 5 and col. 27, claim 19). The application time of the first composition is about 10 to 30 minutes, which is within the claimed range of time as claimed in claim 28 (see col. 10, lines 9-10) and the application time of the first composition is about 2 to 40 minutes, which is overlapped with the claimed range of time as claimed 29 (see col. 10, lines 9-10). Grollier also teaches a method in which the oxidative dye precursor is oxidized with an oxidizing agent such as hydrogen peroxide as claimed in claim 36 (see col. 12 the table and col. 15, Example 4). With respect to claims 19, 39 and 40, it would have been obvious to one having ordinary skill in the art at the time the invention was made to apply such a process for dyeing hair by spraying the composition to any portion of the hair with the reasonable expectation of success because the reference teaches a process for dyeing hair by treating the hair with a composition that can be packaged in an aerosol (see col. 10, lines 16-20), and, thus, a person of the ordinary skill in the art would expect such a composition could be applied by spraying method and would expect such a method to have similar results to those claimed, absent unexpected results.

Although, Grollier et al. (US' 132), teaches a two-stage process for dyeing keratin fibers comprising treating the fibers with a first composition of direct dyestuffs (see col. 8, line 5, col. 10, line 5 and col. 26, claim 12) and post-treated with an oxidation colorant composition comprising oxidative dye precursors (see col. 3, lines 60-61, col. 6, line 5 and col. 27, claim 19). the reference does not teach at least one fiber-structure improving agent to be presented in the pretreatment composition as required by the amended claims. However, the reference teaches a

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process comprising applying to the hair a composition that comprises improving agents such as thickeners, treating agents, sequestering agent and sun filters (see col. 11, lines 59-63).

Nicolas (US' 871) teaches in analogous art of hair dyeing formulations, a method for dyeing hair (see abstract). The method comprises applying to the hair a composition comprising a fiber-structure-Improving agent of panthenol as claimed in claims 26-27 (see col.14 Example 1) and enzymes as oxidizing agents as claimed in claim 37 (see col. 6, lines 11-15).

Therefore, in view of the teaching of the secondary reference, one having ordinary skill in the art at the time the invention was made would be motivated to modify the composition of the primary reference by replacing the hydrogen peroxide with the enzymes as taught by Nicolas and also to incorporate panthenol in the composition with a reasonable expectation of success for improving the hair properties. Further, Nicolas teaches the equivalence between hydrogen peroxide and enzymes in the dyeing composition as oxidizing agents (see col. 6, lines 11-19) and, thus, a person of the ordinary skill in the art would expect such a composition to have similar properties and could be applied by a method similar to those claimed, absent unexpected results.

## Response to Arguments

5 Applicant's arguments filed 4/21/2004 have been fully considered but they are not persuasive.

With respect to the rejection of Grollier et al. (US' 132) in view of Nicolas-Morgantini et al. (US' 871), Applicant argues that Nicolas-Morgantini et al. (US' 871) disclose only a single application step wherein the colorants are pigments which are quite different from the

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substantive and oxidative dyes of either Grollier et al. or applicant's process and, therefore, the combination of these two references thus fails to render obvious applicant's claimed invention.

The examiner respectfully, disagrees with the above arguments because the primary reference of Grollier et al. (US' 132) teaches a process for dyeing hair with a dyeing composition that comprises a number of oxidative dyestuff precursors (see col. 3, lines 16-68 and col. 4, lines 1-68) and the secondary reference of Nicolas-Morgantini et al. (US' 871), teaches a process for dyeing hair using a composition that comprises melanin pigment precursors of indoline and indole compounds which are also oxidative dyestuffs (see col. 3, lines 61-67 and col. 4, lines 1-67), and, the references teach and disclose similar dyeing compositions that comprise similar oxidative dyeing compounds for the same utility. Therefore, the prima facie case of obviousness has been established.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -5:30) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

6/23/2004

isa Ellb

Brian P. Mruk BRIAN & MRUX PRIMARY EXAMINER

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